
In the Matter of the Compensation of
MITCHELL D. CLEM, Claimant
WCB Case Nos. 17-00458, 17-00422
ORDER ON REVIEW
Jodie Phillips Polich, Claimant Attorneys
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Reviewing Panel: Members Johnson and Ousey.

Claimant requests review of Administrative Law Judge (ALJ) Naugle's order that; (1) upheld the SAIF Corporation's denials of his new/omitted conditions claims for hypoxia, post-traumatic pain, and agitation; and (2) upheld SAIF's combined condition denial of claimant's deep vein thrombosis (DVT) condition. On review, the issue is compensability.¹

We adopt and affirm the ALJ's order with the following supplementation regarding claimant's DVT condition.

Before claimant's June 2016 work injury, he received medical treatment for multiple episodes of left lower extremity DVT and was prescribed an ongoing regimen of anticoagulant medications. (Exs. 1, 2, 3, 4, 5, 6).

On June 22, 2016, claimant, a painter, fell off of a scaffolding and was admitted to the hospital with multiple fractures. (Ex. 7). SAIF accepted the claim for C3 superior endplate fracture, right hip fracture, L1 compression fracture, right intertrochanteric femur fracture, right calcaneal² fracture and left calcaneal fracture.

On June 25, 2016, a venous duplex scan showed a DVT in the right common femoral vein and another DVT in the left popliteal vein. (Ex. 25-2).

On July 10, 2016, Dr. Okada evaluated claimant for surgical repair of his bilateral calcaneus fractures. (Ex. 34). Dr. Okada commented that claimant's history of multiple "thrombotic events" suggested that he was "thrombophilic."

¹ On May 25, 2018, the Board approved the parties' Claim Disposition Agreement, in which claimant released his past, present, and future rights to "non-medical service-related" benefits under his June 2016 injury claim. (WCB Case No. 18-01202C).

² "Calcaneal" designates that relating to the calcaneus or "heel bone." *Stedman's Electronic Medical Dictionary*, Version 7.0 (2007).

(Ex. 34-1). Dr. Okada recommended use of a “vena caval” filter to protect claimant from a potentially life-threatening pulmonary embolism while anticoagulation medicine was discontinued in preparation for calcaneal fracture surgeries. (*Id.*)

On July 11, 2016, an “IVC filter” placement procedure was successfully performed. (Ex. 36).

On July 12, 2016, Dr. Meeker surgically repaired claimant’s bilateral calcaneal fractures. (Ex. 38).

On July 20, 2016, the IVC filter was removed. (Ex. 42).

In November 2016, claimant was examined by Dr. Blumberg, a general surgeon, at SAIF’s request. (Ex. 62). He opined that claimant had a history of DVT before the June 2016 work injury, which was the reason for his ongoing anticoagulant medications at that time. (Ex. 62-7). He concluded that claimant likely had additional DVT while he was hospitalized for his work injury and was taken off of anticoagulant medications. (*Id.*) He noted that a venacaval filter was installed to protect claimant from a pulmonary embolism while he remained off his anticoagulant medication. (*Id.*)

Dr. Blumberg reported that, once claimant was allowed to resume his anticoagulant medication, the venacaval filter was removed. (*Id.*) After removal of the venacaval filter, Dr. Blumberg considered claimant to be in the same status regarding his recurrent venous thromboses as he was before the injury. (*Id.*) Dr. Blumberg opined that there was a combined condition in that claimant’s preexisting DVT condition rendered him more susceptible to the recurrence of DVT. (*Id.*)

On November 30, 2016, Dr. Lorber, claimant’s attending physician, deferred to Dr. Blumberg’s opinion that claimant had a combined condition due to the combination of his injuries and his preexisting DVT condition. (Ex. 66-1). He also deferred to Dr. Blumberg’s conclusion that claimant was back to his “baseline status” when the venacaval filter was removed and he was able to resume his anticoagulant medications. (*Id.*)

On December 1, 2016, SAIF issued a letter that accepted a “combined condition,” stating that claimant’s preexisting DVT condition combined with his injury and caused a “single episode deep vein thrombosis of [the] right common

femoral vein” and a “single episode [of] deep vein thrombosis of [the] left popliteal vein.” (Ex. 69). In that same letter, explaining that after the removal of the venacaval filter claimant’s “accepted injury” was no longer the major contributing cause of the combined condition, SAIF also denied claimant’s “combined single episode [of] deep vein thrombosis of [the] right common femoral vein and single episode [of] deep vein thrombosis of [the] left popliteal vein on and after July 15, 2016.” (Ex. 69-1). Claimant requested a hearing.

In March 2017, Dr. Blumberg agreed with a statement describing the combined condition as involving the acute effects of the work injury combined with preexisting DVT. (Ex. 74-3). He explained that, after the venacaval filter was removed, the “work injury” was no longer the major cause of claimant’s anticoagulation therapy and need for medical treatment of the DVT. (*Id.*) He further clarified that, while he had previously stated that claimant’s preexisting DVT made him more susceptible to subsequent occurrences, it also actively and causally contributed to claimant’s need for treatment for DVT following the work injury. (Ex. 74-4).

In July 2017, Dr. Blumberg was deposed. (Ex. 76). He confirmed that claimant had experienced multiple DVT before the work injury and had been on anticoagulant medication given his pre-injury DVT condition. (Ex. 76-32). Dr. Blumberg explained that claimant’s injury, particularly the femur fracture, required him to discontinue anticoagulant medications. (Ex. 76-34). Dr. Blumberg noted that the venacaval filter was inserted due to the presence of a DVT, and as a precaution while claimant was not taking anticoagulant medication. (Ex. 76-35). Dr. Blumberg concluded that the need for anticoagulant therapy following the removal of the venacaval filter was due to claimant’s preexisting DVT condition. (Ex. 76-37).

Dr. Blumberg further explained that all of claimant’s injuries (except the cervical spine fracture) combined with the preexisting DVT, because those injuries confined him to a prolonged bed rest. (Ex. 76-38). He stated that the immobilization and the injuries to claimant’s lower extremities combined with claimant’s preexisting DVT. (Ex. 76-40).

The ALJ found that SAIF accepted a combined condition, which it subsequently denied. The ALJ relied on the opinion of Dr. Blumberg to find that, by July 15, 2016, when the venacaval filter was removed, a sufficient change in claimant’s circumstances/condition was established to support SAIF’s combined condition denial.

On review, claimant contends that SAIF's combined condition denial does not identify a legally cognizable preexisting condition, and does not establish a "combining" of a preexisting and an otherwise compensable injury/condition. Additionally, claimant asserts that "all of the accepted conditions" must combine with a preexisting condition for there to be a valid combined condition. Based on the following reasoning, we disagree.

For injury claims, a "preexisting condition" is an injury, disease, or condition that contributes to disability or need for treatment, which has been diagnosed or treated before the injury or is arthritis or an arthritic condition. ORS 656.005(24)(a); *Guadalupe Arias-Santos*, 69 Van Natta 667, 669 (2017); *see, e.g., Donald L. Midkiff*, 68 Van Natta 1272, 1275 (2016) (the claimant's obesity constituted a preexisting condition because the record established that it was diagnosed before the compensable injury and it contributed to the claimant's disability). The alleged preexisting condition must contribute to the claimant's disability or need for treatment. ORS 656.005(7)(a)(B), (24)(a).

To constitute a "combined condition," claimant must have two medical problems simultaneously. *See Multifoods Specialty Distrib. v. McAtee*, 333 Or 629, 636 (2002); *Maria J. Cordova*, 69 Van Natta 932, 935 (2017).

A single document may function as both an acceptance and a [**12] denial. *See Stockdale v. SAIF*, 192 Or App 289 (2004) (carrier may accept a combined condition and deny the compensability of the same condition under ORS 656.262(6)(c) and (7)(b) in the same document).

A carrier may deny an accepted combined condition if the otherwise compensable injury "ceases" to be the major contributing cause of the combined condition. ORS 656.262(6)(c). To do so, the carrier must establish that there is a "preexisting condition" as defined by ORS 656.005(24), and that claimant's condition is a "combined condition." ORS 656.266(3)(a); *SAIF v. Kollias*, 233 Or App 499, 505 (2010); *Dezi Meza*, 63 Van Natta 67, 70 (2011).

The carrier also bears the burden to establish a change in claimant's condition or circumstances such that the otherwise compensable injury was no longer the major contributing cause of the disability or need for treatment of the combined condition. ORS 656.266(2)(a); *Wal-Mart Stores, Inc. v. Young*, 219 Or App 410, 419 (2008).

In analyzing a “ceases” denial under ORS 656.262(6)(c), we evaluate only the contributions of the component parts of the combined condition; *i.e.*, the otherwise compensable injury and the statutory preexisting condition. *Vigor Indus., LLC v. Ayres*, 25 Or App 795, 803 (2013). In *Brown*, 361 Or at 282, the court concluded that the “otherwise compensable injury” is the previously accepted condition, rather than the work-related injury incident. Therefore, a carrier may deny the accepted combined condition if the medical condition that the carrier previously accepted ceases to be the major contributing cause of the combined condition. *Id.*

The effective date of the combined condition acceptance provides the baseline for determining whether there has been a “change” in claimant’s condition or circumstances. *Oregon Drywall Sys. v. Bacon*, 208 Or App 205, 210 (2006). Where a modified notice of acceptance does not specify a date different from the date of the original notice of acceptance, the effective date of the modified acceptance is based on the effective date of the prior, or initial, acceptance. *Bacon*, 205 Or App at 210; *Michael A. Kelly*, 58 Van Natta 2682 (2006). The carrier has the burden of proof. ORS 656.262(2)(a); *Young*, 219 Or App at 414.

Here, SAIF’s denial identified claimant’s preexisting condition as a preexisting DVT and chronic anti-coagulation therapy. (Ex. 69). Claimant contends that the preexisting DVT did not “combine” with any of his accepted conditions, and that the anti-coagulation therapy is not a condition. Therefore, he argues that SAIF has not established a legally cognizable preexisting condition in its combined condition denial. ORS 656.005(24)(a). Our review of the record leads us to a different conclusion.

Dr. Blumberg explained that claimant had repeated episodes of non-provoked DVT before the June 2016 work injury, which required anticoagulant medications to prevent further occurrences. (Ex. 76-33). He further concluded that claimant’s injuries to his lower extremities, and the subsequent immobilization, combined with his preexisting DVT condition to result in another occurrence of DVT after the injury. (Ex. 76-40). Dr. Blumberg’s opinion regarding claimant’s combined condition is not contested by another physician’s opinion.

Based on Dr. Blumberg’s opinion, we are persuaded that SAIF’s denial identifies a legally cognizable preexisting condition and valid combined condition consisting of claimant’s DVT following the June 2016 work injury to his lower extremities in combination with his preexisting DVT.

On December 1, 2016, SAIF accepted a “combined condition” consisting of claimant’s preexisting DVT and a single episode of DVT. (Ex. 69). In the same document, SAIF denied the combined condition effective on July 15, 2016. (*Id.*). Under ORS 656.262(6)(c), the effective date of acceptance of a combined condition must precede the effective date of the denial of a combined condition. *See Stockdale*, 192 Or App at 294.

Such an interpretation of SAIF’s combined condition acceptance and denial is consistent with *Brown*, 361 Or at 272 (2017), which requires the combined condition to be a combination of an accepted condition (*i.e.*, claimant’s “post-injury” DVT resulting from injuries to his lower extremities) and a preexisting condition (*i.e.*, his preexisting DVT condition).³

We turn to SAIF’s “ceases” denial. Here, SAIF’s December 1, 2016 acceptance of claimant’s combined condition stated that it was effective beginning on June 22, 2016, the date of claimant’s injury. (Ex. 69). Under such circumstances, June 22, 2016 constitutes the effective date for the acceptance of the combined condition. Therefore, SAIF must prove a change in condition or circumstances between June 22, 2016 and July 15, 2016, the expressly identified “effective date” stated in its December 1, 2016 denial. (*Id.*)

Because of the possible alternative causes of claimant’s current combined condition and need for medical treatment, resolution of this matter is a complex medical question that must be resolved by expert medical opinion. *Uris v. Comp. Dep’t*, 247 Or 420, 424-36 (1967); *Barnett v. SAIF*, 122 Or App 279 (1993). We rely on medical opinions that are well reasoned and based on complete information. *Somers*, 77 Or App 259, 263 (1986).

Here, the opinions of Drs. Blumberg and Lorber both support a conclusion that the “otherwise compensable injury” (*i.e.*, claimant’s “post-injury” DVT resulting from his injured lower extremities) combined with the statutory preexisting DVT condition, and that the “otherwise compensable injury” was no longer the major contributing cause of claimant’s need for treatment/disability for claimant’s combined DVT condition by July 15, 2016.

³ Claimant neither cites, nor are we aware of, any legal support for the proposition that *all* accepted conditions must combine with a preexisting condition to establish the existence of a combined condition. Here, as reasoned above, because the record establishes that claimant’s accepted “post-injury” DVT condition resulting from injuries to his lower extremities combined with his preexisting DVT condition, SAIF’s “ceases” denial was procedurally valid.

As stated above, Dr. Blumberg opined that claimant had a combined condition consisting of the post-injury DVT resulting from injuries to his lower extremities and claimant's preexisting DVT condition. (Ex. 76-40). Additionally, after removal of the venacaval filter, Dr. Blumberg considered claimant to be in the same status regarding his recurrent venous thromboses as he was before the injury. (Ex. 62-7). Dr. Blumberg explained that, while the placement of the venacaval filter was necessitated by claimant's post-injury DVT, as well as the need to discontinue his anticoagulant medication to receive surgical treatment, once the venacaval filter was removed and claimant continued his pre-injury anticoagulant therapy, the post-injury DVT was no longer the major contributing cause of his disability/need for treatment of the post-injury DVT. (*Id.*) Dr. Lorber agreed with Dr. Blumberg's assessment and commented that claimant had returned to his "baseline status" following the removal of the venacaval filter. (Ex. 66-1). No physician contradicted the opinions of either Dr. Blumberg or Dr. Lorber.

We consider the opinion of Dr. Blumberg (as supported by Dr. Lorber) to be well reasoned and to have appropriately weighed the relative contributions of the "otherwise compensable injury" and the preexisting condition. Consequently, we find their opinions persuasive. *See Dietz v. Ramuda*, 130 Or App 397, 401-02 (1994), *rev dismissed*, 320 Or 416 (1995) (to establish a cause of a disability or need for treatment as the "major contributing cause," an expert opinion must weigh the relative contribution of each cause); *Somers*, 77 Or App at 263; *Jessie Bell*, 67 Van Natta 2034, 2036 (2015).

Under such circumstances, the record persuasively establishes that claimant's "otherwise compensable injury" was no longer the major contributing cause of his need for treatment/disability for his combined DVT condition by July 15, 2016. Consequently, we affirm the ALJ's decision that upheld SAIF's "combined condition" denial.

ORDER

The ALJ's order dated September 25, 2017 is affirmed.

Entered at Salem, Oregon on May 31, 2018